

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 101

Case No. : C. R. No. 4817 of 2016

Date of Decision : December 04, 2018

Ram Niwas Petitioner

vs.

Rajesh @ Krishan Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Amit Prashar, Advocate
for the petitioner.

Mr. Rajesh Lamba, Advocate
for the respondent.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 21.07.2016 passed by the Additional District Judge, Gurgaon (for short – the Appellate Court), through which an application, preferred by the petitioner under Section 151 CPC seeking therein permission to cross-examine the plaintiff, has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein joint possession of the land detailed and described in the plaint (for short – the suit property) after holding him to be joint owner of the suit property. Through judgment and decree dated 30.05.2012, the suit was dismissed. The respondent challenged the dismissal of his suit by way of an appeal but since there was delay of 60 days in filing of the appeal and

the Appellate Court did not find any satisfactory explanation for the same, it dismissed his appeal on the ground of delay. The respondent then challenged the order passed by the Appellate Court by way of a revision petition before this Court being C. R. No. 2023 of 2013 – Rajesh @ Krishan vs. Ram Niwas, which was allowed on 20.01.2015 with a direction to the Appellate Court to decide the respondent's appeal on merits. In the above appeal, the respondent filed an application under Order 41 Rule 27 CPC seeking therein to adduce additional evidence. The Appellate Court, through order dated 29.04.2016, allowed the application and granted the respondent two opportunities to produce his additional evidence. Such evidence was ordered to be led before the Trial Court which was directed to send a report to the Appellate Court after recording its comments on the leading of such evidence. In compliance with the order of the Appellate Court, the matter was taken up by the Trial Court on 06.05.2016 on which date the petitioner-defendant failed to appear before the Trial Court. Therefore, the Trial Court conducted ex-parte proceedings and as directed by the Appellate Court, sent its report. The petitioner-defendant then filed an application before the Appellate Court to the effect that the petitioner could not appear before the Trial Court on 06.05.2016 due to an inadvertent error committed by the Clerk of his counsel as he had noted a wrong date. It was prayed that the petitioner be granted one opportunity to join the proceedings before the Trial Court. The Appellate Court rejected the petitioner's prayer through the order impugned in the present proceedings.

Learned counsel for the parties have been heard.

After the matter had been remitted by the Appellate Court to

the Trial Court, permitting the respondent to lead additional evidence with a direction to the Trial Court to submit a report in that regard, the petitioner-defendant had failed to appear in such proceedings on the ground that the clerk of the counsel representing the petitioner had inadvertently noted a wrong date. All that the petitioner seeks is to cross-examine the only witness produced by the respondent-plaintiff by way of additional evidence. In case the same is not done, it would cause serious prejudice to him. The grant of permission, as prayed for by the petitioner, would also be in line with the principles of natural justice and would not be a cause of much prejudice to the respondent.

In view of the above, the impugned order is set aside and the petitioner is granted one and only one opportunity to cross-examine the witness produced by the respondent before the Trial Court in terms of the order of the Appellate Court dated 29.04.2016. It is made clear that the petitioner can cross-examine the witness produced by the respondent only on the issue which was sought to be proved by way of additional evidence. Such permission is subject to payment of Rs.25,000/- as costs to be paid by the petitioner to the respondent.

The petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

December 04, 2018
monika

Whether speaking/reasoned ?	Yes.
Whether reportable ?	No.

